SUPREME COURT OF THE UNITED STATES.

No. 49.

HYDE & GLEISES AND H. LOCKETT, PLAINTIFFS IN ERROR,

vs.

BOORAEM & CO.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR EAST LOUISIANA.

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S. D. Langtree, Print.

CIRCUIT COURT OF THE UNITED STATES,
Ninth Judicial Circuit, Eastern District of Louisiana.

Be it remembered, that on the third day of May, in the year of our Lord one thousand eight hundred and thirty-eight, Booraem & Co. came into court, by M. W. Hoffman, Esq., their attorney, and filed the following petition, to wit:

To the honorable the circuit court of the ninth circuit of the United States, holding sessions in and for the eastern district of Lousiana.

The petition of Frederick A. Clark, N. A. Booraem, J. B. Rathborn and James C. Dawson, merchants, residing in the city of New York, and there trading under the firm of Booraem & Co.; respectfully shews, that your said petitioners are each and all citizens of the State of New York, and that Joshua B. Hyde and Paul J. Gleises, and Henry Lockett, parties defendants hereto, are each and all citizens of the State of Louisiana; your petitioners aver that said Hyde & Gleizes, merchants, residing in the city of New Orleans, and trading under the firm of Hyde & Gleises, being indebted to your petitioners in a considerable sum of money, did, in the month of April, 1837, deliver to your petitioners the following promissory notes, to wit: three drawn by Hyde & Gleises, to the order of, and endorsed by T. R. Hyde & Brothers, dated 6th April, 1837, at 6, 12 and 18 months, amounting to five thousand dollars. Three drawn by same drawers, to the order of, and endorsed by William T. Hepp, dated the 6th April, 1837, at 7, 11 and 15 months, amounting to five thousand dollars; and three notes, drawn by same drawers, to the order of Booraem & Co., dated 6th of April, 1837, at 9, 13 and 17 months, amounting to the sum of twenty-seven hundred and fifty dollars, and sixty-four cents. That on receipt of said notes, your petitioners agreed to extinguish any and all demands which they had against said Hyde & Gleises, or for which your petitioners had become responsible by account, note or acceptance, previous to the 6th of April, 1837, and which, according to the interest, account, and the exchange of three per cent. premium, as agreed on, amounted to the sum of $11,798 64, as will more fully appear from the document here annexed, marked A, made out by, or at the instance of said Hyde & Gleises. Petitioners aver that they did pay and extinguish said demands with the exception of a draft for 2,000 dollars, and a note for $1,568 24, which your petitioners were unable to provide the means of taking up, and which have been since taken up by said Hyde & Gleises. Petitioners further aver, that one of their said firm, to wit: J. B. Rathborn, to whom said notes were so delivered in New Orleans, being about to

visit the State of Mississippi, left the same in New Orleans, and they are now in the hands of the said H. Lockett, Esq., who has been notified not to dispose thereof to the prejudice of the rights of your petitioners. They further aver, that they have since advised said Hyde & Gleises of the state of the account between the parties, and demanded a delivery of five of said notes, to wit: the three endorsed by said W. T. Hepp, and a balance in cash of $469 12, to which your petitioners are justly entitled, as will appear from the copy of the account, here annexed for reference, marked B. They further aver, that they have demanded the delivery of said five last described notes from said Lockett, but he has refused to deliver the same.

Your petitioners therefore pray that said Hyde & Gleises, and the said H. Lockett, Esq., be cited to answer this petition, that judgment be rendered in favor of your petitioners, decreeing a delivery to them, by said Lockett, of the three notes drawn by said Hyde & Gleises, to the order of T. R. Hyde & Brothers, and two of the three notes, drawn to the order of said Wm. T. Hepp, one at 11 months, for 1,500 dollars, and the other for 2,000 dollars, at 15 months; and further decreeing the said Hyde & Gleises to pay the said balance of four hundred and sixty-nine dollars twelve cents, and costs of suit; and your petitioners pray all such other and further relief as the nature of the case may require.

Signed M. W. HOFFMAN, *Attorney.*

Document A.

1837.			
Mar. 15,	Paid for our account, - - -	$2,000 00	
	Add 22 days' interest to 6 April, a 8,	10 23	
			$2,010 23
April 6,	Paid for our account, - - - - -		2,365 00
" 28,	Our draft acc'pt and due in N. York,	2,000 00	
	Less 22 days' interest, a 8 per cent.	10 23	
			1,989 77
May 7,	Our note in your favor, due this day,	1,568 74	
	Less 31 days' interest, a 8 per cent.	10 23	
			1,557 93
July 4,	Our note in your favor, due this day,	1,592 36	
	Less 89 days' interest, a 8 per cent.	31 48	
			1,560 88
	Last bill of goods, - - - -	2,128 36	
	Less 7 months' interest a 8 per cent.	99 31	
			2,029 05
	Add 3 per cent. exchange on $9,526,		285 78
			$11,798 64

1837.								
Oct.	T. R. H. a	6	months,	$1,500 00,	Interest,	$60 00		
Nov.	W. T. H. a	7	"	1,500 00,	"	70 00		
1838.								
Jan.	H. & G. a	9	"	899 32,	"	54 00		
Mar.	W. T. H. a	11	"	1,500 00,	"	110 00		
April,	T. R. H. a	12	"	1,500 00,	"	120 00		
May,	H. &. G. a	13	"	956 00,				
July,	W. T. H. a	15	"	2,000 00,	"	200 00		
Sep.	H. & G. a	17	"	899 32,	"	102 00		
Oct.	T. R. H. a	18	"	2,000 00,	"	240 00	956 00	
				$12,754 64			$12,754 64	

T. R. H. $5,000 00
W. T. H. 5,000 00
H. & G. 2,754 64

$12,754 64

$2,365. NEW YORK, *October 3d*, 1836.

Six months after date, we promise to pay to the order of Booraem & Co., at the bank of Orleans, at New Orleans, twenty-three hundred and sixty-five dollars, value received.

Signed HYDE & GLEISES.

No. 783. Due 6 April.

Endorsed: Pay to M. Judson & Co., or order, BOORAEM & Co.
" Pay to M. Robinson, Ag. or order, M. JUDSON & Co.
" Pay to P. Marchais, A., cash, or order,
M. ROBINSON, *Agent.*

Note.

$1,592 36. NEW YORK, 1*st November*, 1836.

Eight months after date, we promise to pay to the order of Messrs. Booraem & Co., at the Union Bank, in New Orleans, Louisiana, fifteen hundred and ninety-two dollars and thirty-six cents, value received.

HYDE & GLEISES.

No. 1,974. Due 1–4 July.

Endorsed, BOORAEM & Co.

Bill of Exchange.

Exch. $2,000. NEW ORLEANS, 23*d December*, 1836.

Sixty days after sight of this first of exchange, (second unpaid) pay to Edward Lafonta, Esq., or order, two thousand dollars, value received, and charge the same to account.

HYDE & GLEISES.

To Messrs. BOORAEM & Co., New York.
Accepted January 11th, 1837.

BOORAEM & Co.

Endorsed: Pay J. P. Nesbit, cashier, or order,
EDWARD LAFONTA.
" " G. Hemmerbling, Esq., cashr. or order,
J. P. NESBIT, *Cashier.*

Document annexed to the Petition.

Duplicate.

First. Received from Hyde & Gleises, at New Orleans, this tenth day of April, eighteen hundred and thirty-seven, the following described promissory notes, to wit: Three drawn by Hyde & Gleises, to the order of, and endorsed by T. R. Hyde & Brother, dated the sixth day of April, eighteen hundred and thirty-seven, at six, twelve and eighteen months, amounting in all to five thousand dollars. Three, drawn by same persons, to the order of, and endorsed by Wm. T. Hepp, dated the sixth day of April, eighteen hundred and thirty-seven, at seven, eleven and fifteen months, amounting in all to the sum of five thonsand dollars; and three notes, drawn by said Hyde & Gleises, to the order of Booraem & Co., dated the sixth day of April, eighteen hundred and thirty-seven, at nine, thirteen, and seventeen months, amounting in all to twenty-seven hundred and fifty-four dollars and sixty-four cents.

Second. The above notes are given to said Booraem & Co. for the purpose of extinguishing any and all demands they have against said Hyde and Gleises, which arose prior to the said sixth day of April, eighteen hundred and thirty-seven, by account, note or acceptance, said Booraem & Co. hereby agreeing to take up and pay any notes drawn by said Hyde & Gleises, in favor of Booraem & Co., as well as the acceptance of a draft of two thousand dollars, drawn by said Hyde & Gleises, on the said Booraem & Co., due in New York, on the twenty-eight day of April, eighteen hundred and thirty-seven.

Should Joshua B. Hyde, of the firm of Hyde & Gleises, who is now in New York, have settled for the one draft of two thousand dollars paid by said Booraem & Co., on the fifteenth March, eighteen hundred and thirty-seven, or for the sum of twenty-one hundred and twenty-eight dollars and thirty-six cents, by notes or otherwise, the said Booraem & Co. are bound to take them up at maturity, and are included in said arrangement herein first specified.

Signed BOORAEM & CO.

Endorsed. Filed May 3d, 1838.
Signed D. N. HENNEN, *Clerk.*

And on same day the following citation, issued from the clerk's office, to wit:

BOORAEM & Co.
vs.
HYDE & GLEISES and H. LOCKETT.

The President of the United States of America to the Marshal of the Eastern District of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to cite Hyde & Gleises, in the east district of Louisiana, to comply with the demand contained in the petition of which a copy accompanies this citation, or to be and appear at the circuit court of the United States for the eastern district of Louisiana, to be holden in the city of New Orleans, on the 10th day after service hereof, to answer to the complaint of Booraem & Co., and that they do file their defence or answer with the clerk of said court on or before the same, or judgment will be given against them by default, and have you then and there this writ.

Witness the Honorable R. B. Taney, Chief Justice of the
[L. S.] Supreme Court of the United States, at the city of New Orleans, this third day of May, 1838, and sixty second year of the Independence of the United States.

Signed T. W. COLLINS,
Deputy Clerk.

Marshal's Return.

Received, Thursday, May 3d, 1838, and on the fourth day of said month served a copy of this citation, together with a duly certified copy of plaintiffs' petition on Messrs. Hyde & Gleises, by handing the same to Mr. Gleises, a member of said firm, in person, at New Orleans. Returned May 4th, 1838.

Signed W. W. WIGGINS,
Dy. U. S. Marshal.

BOORAEM & Co.
vs.
HYDE & GLEISES and H. LOCKETT.

The President of the United States of America to the Marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to cite H. Lockett, Esquire, in the eastern district of Louisiana, to comply with the demand contained in the petition, of which a copy accompanies this citation, or to be and appear at the circuit court of the United States, for the eastern district of Louisiana, to be holden in the city of New Orleans, on the 10th day after service hereof, to answer to the complaint of Booraem & Co., and that he do file his defence or answer with the clerk of said court, on or before the same, or judgment will be given against him by default, and have you then and there this writ.

Witness the Honorable R. B. Taney, Chief Justice of the
[L. S.] Supreme Court of the United States, at the city of New Orleans, this third day of May, 1838, and sixty-second year of the Independence of the United States.

Signed T. W. COLLENS,
Deputy Clerk.

Marshal's Return.

Received, Thursday, 3d May, 1838. Served copy of the within citation, together with duly certified copy of the plaintiffs' petition and documents annexed, on H. Lockett, the defendant within named, by delivering the same to him in person, at New Orleans, on the 3d day of May, 1838.

Returned May 4th, 1838.

Signed JOHN H. HOLLAND,
Marshal.

And afterwards, on the 12th day of October, 1838, the defendants, Hyde & Gleises, came into court by H. Lockett and W. C. Micou, Esquires, their attorneys, and filed the following answer and plea in reconvention, to wit:

BOOREAM & CO.
vs.
HYDE & GLEISES and H. LOCKETT, ESQR. } U. S. Circuit Court.

The defendants, Hyde & Gleises, for answer to the plaintiffs' petition, do say, that certain notes drawn and endorsed as stated in said petition, were prepared for delivery to said plaintiffs, and that plaintiffs gave for the same a receipt, which is hereunto annexed and referred to, and which contains stipulations binding upon plaintiffs and forming conditions precedent to the delivery of said notes.

That to secure the compliance of plaintiffs with their said agreement, it was mutually agreed that the said notes and the receipt aforesaid should be deposited in the hands of H. Lockett, Esquire, to be delivered to plaintiffs when the several conditions mentioned in their said receipt were performed, and only in that event to be delivered.

That the plaintiffs totally neglected and refused to perform said conditions which they admit in their petition. That these defendants, in consequence of such omission and neglect, were forced to pay, and did pay, as admitted in plaintiffs' petition, a note for $1568 24, and an acceptance for $2,000, with costs and damages, both of which the plaintiffs had themselves expressly assumed to pay. That the friends of these defendants were, as plaintiffs well knew, induced to endorse the notes now demanded, by the reasonable expectation that defendants would be enabled to meet their said notes from the profits of their business, and save their endorsers from loss—if the extension stipulated in the said receipt were granted upon all the demands of plaintiffs against the defendants. That by reason of the entire failure of the plaintiffs to comply with their said agreement, the means, resources, and credit of defendants were exhausted in meeting the large payments which they were forced to make as aforesaid, their business was destroyed, and their ability to protect their said endorsers, utterly at end. These defendants do therefore pray that plaintiffs have no

claim in law or justice to said endorsed notes, and pray that their demand for the same be dismissed.

To so much of their petition as alleges an indebtedness of defendants to plaintiffs, the defendants say that they are not indebted in manner and form as alleged, and pray that plaintiffs' demand be dismissed.

These defendants do further allege, that by reason of the neglect and refusal of the plaintiffs to perform the conditions of their said receipt, these defendants were forced to submit to great losses and sacrifices in order to meet the payment of the note for $1,568 21, and the aceptance for $2,000, with its costs, charges, and damages under protest. That these sacrifices constrained defendants to close their business and destroyed their commercial credit.

By all of which defendants say, they have sustained damages to the amount of five thousand dollars, and pray that plaintiffs be cited to answer in reconvention, and be condemned to pay the said amount of $5,000 to the defendants.

Signed LOCKET & MICOU,
Deffts. Attorneys.

Receipt Annexed.

First. Received from Hyde & Gleises, at New Orleans, this tenth day of April, eighteen hundred and thirty-seven, the following described promissory notes, to wit: three drawn by Hyde & Gleises to the order of and endorsed by T. R. Hyde & Brother, dated the sixth day of April, eighteen hundred and thirty-seven, at six, twelve and eighteen months, amounting in all, to the sum of five thousand dollars. Three drawn by the same persons, to the order of and endorsed by William T. Hepp, dated the sixth day of April, eighteen hundred and thirty-seven, at seven, eleven, and fifteen months, amounting in all, to the sum of five thousand dollars; and three notes drawn by said Hyde & Gleises to the order of Booraem & Co., dated the sixth day of April, eighteen hundred and thirty-seven, at nine, thirteen and seventeen months, amounting in all, to twenty-seven hundred and fifty-four dollars and sixty-four cents.

Second. The above notes are given to said Booraem & Co. for the purpose of extinguishing any and all demands they have against said Hyde & Gleises, which arose prior to the said sixth of April, eighteen hundred and thirty-seven, by account, note or acceptance, said Booraem & Co. hereby agreeing to take up and pay any notes drawn by said Hyde & Gleises in favor of Booraem & Co. as well as the acceptance of a draft of two thousand dollars, drawn by said Hyde & Gleises on the said Booraem & Co., due in New York on twenty-eighth of April, eighteen hundred and thirty-seven. Should Joshua B. Hyde, of the firm of Hyde & Gleises, who is now in New York, have settled for the one draft of two thousand dollars, paid by said Booraem & Co., on fifteenth March, eighteen hundred

and thirty-seven, or for the sum of twenty-one hundred and twenty-eight dollars and thirty-six cents, by notes or otherwise, the said Booraem & Co. are bound to take them up at maturity, and are included in said arrangement herein first specified.

Signed, BOORAEM & CO.

And on same day, Henry Lockett, Esq., one of the defendants came into court by Wm. C. Micou, his attorney, and filed the following answer, to wit:

BOORAEM & Co.
vs
HYDE & GLEISES AND H. LOCKETT. } Circuit Court of U. States.

The answer of Henry Lockett to the plaintiffs' petition, respectfully shews, that the notes demanded of this defendant were deposited in his hands by the joint consent of plaintiffs, and Hyde & Gleises, defendants, to be by this defendant delivered to plaintiffs, where all the conditions contained in the annexed receipt were fulfilled by said plaintiffs.

That this defendant is advised and believes, that said plaintiffs never did fulfil the agreements contained in their said receipt, and are therefore not entitled to the notes. Wherefore, this defendant prays that the demand of plaintiffs be dismissed.

Signed WM. C. MICOU, *Defs. Att'y.*

And on same day, T. R. Hyde & Brother and W. T. Hepp, came into court by H. Lockett & W. C. Micou, Esq., their attorneys, and filed the following petition of intervention, to wit:

To the Honorable the Ninth Circuit Court of the United States for the Eastern District of Louisiana.

The petition of Theophilus R. Hyde and Joseph Addison Hyde, merchants, trading in copartnership in the city of New Orleans, under the firm of T. R. Hyde & Brother, and of William T. Hepp, all citizens of the state of Louisiana, respectfully shews, that there is a suit pending in this court between Booraem & Co., citizens of New York, plaintiffs, and Hyde & Gleises and H. Lockett, defendants, citizens of Louisiana, in the issue of which your petitioners have a direct and important interest; wherefore petitioners pray to be permitted to intervene in the said cause.

These interveners allege that they are the indorsers upon the notes which form the object of plaintiffs' demand, and are described in their petition. That intervenors consented to endorse said notes, with the express understanding, that all the claims of plaintiffs against Hyde & Gleises should be arranged and extended as stipulated in the receipt annexed to answer of defendants, and from the reasonable expectation, that Hyde & Gleises would thereby be enabled to protect intervenors from loss.

That plaintiffs well knew that such were the inducements moving these intervenors to endorse said notes, and expressly agreed that the said endorsements should not be binding upon intervenors, unless said plaintiffs fully complied with the terms on which they were given. That if said plaintiffs had complied with and performed the several conditions, to which they had bound themselves in their said receipt, Hyde & Gleises would have been enabled to continue their business and to protect their endorsers, these intervenors. That plaintiffs totally neglected to perform the conditions aforesaid, and thereby forced the defendants, Hyde & Gleises, to meet the payment of a note for $1,568 24, and an acceptance for $2,000, with costs and damages. That the resources and credit of Hyde & Gleises were exhausted in meeting said payments, their business destroyed, and they were rendered utterly unable to protect these intervenors from loss, if their said endorsements should be delivered to plaintiffs.

Wherefore these intervenors do say, that the plaintiffs have no right in justice or law to the possession of said notes, and that these intervenors are not bound, by their endorsements appearing thereon.

Intervenors therefore pray, that said plaintiffs be cited to answer this intervention, and that the said endorsed notes be decreed to be cancelled and void.

Signed LOCKETT & MICOU,
Attorneys for Intervenors.

And afterwards, on the 20th day of November, 1838, the plaintiffs came into court and filed the following answer to the plea in reconvention of the defendants, to wit:

BOORAEM & Co.
vs.
HYDE & GLEISES AND H. LOCKETT, ESQ. } U. States Circuit Court.

The plaintiffs in this case come, and for answer to the plea of reconvention made by defendants, Hyde & Gleises, say, that they are not indebted to said defendants in any manner and form. They aver that said defendants are indebted to them, said plaintiffs, in manner and form as alleged in their petition, and pray judgment accordingly.

Signed M. W. HOFFMAN.

And on same day said plaintiffs came into court by said M. W. Hoffman, Esq., their attorney, and filed the following answer to the petition of intervention of T. R. Hyde & Brother and W. T. Hepp, to wit:

BOORAEM & Co.
vs.
HYDE & GLEISES AND H. LOCKETT, ESQ., AND T. R. HYDE & BRO., Intervening parties. } U. S. Circuit Court.

The plaintiffs herein come into court and for answer to the petition of intervention of said Hyde & Brother, respectfully shews, that they deny all the allegations in said petition of intervention contained, which in any manner tend to shew that said intervenors are entitled to the possession of said notes or any part thereof, and and pray said intervention may be dismissed with costs.

Signed M. W. HOFFMAN,
Plaintiffs' Attorney.

And afterwards, on the 8th day of June, 1839, the following entry was made of record, to wit:

BOORAEM & Co.
vs.
HYDE & GLEISES AND H. LOCKETT. } No. 341.

This cause came on this day for trial, M. W. Hoffman, Esq., appearing for plaintiffs, and H. Lockett and W. C. Micou, Esquires, appearing for defendants, when on motion and by consent of parties it was continued until the next term.

And afterwards, on the 21st day of December, 1839, the following rule was entered of record, to wit:

BOORAEM & Co.
vs.
HYDE & GLEISES, et als. } No. 341.

On motion of M. W. Hoffman, Esq. of counsel for the plaintiffs, and it appearing, by the pleadings of the cause, that Henry Lockett, Esq., attorney for the defendants, is in possession of the following papers, the right to which is in controversy, it is ordered that the said Lockett produce on the trial of this cause said papers, as follows: 3 notes executed by Hyde & Gleises to Booraem & Co., at 9, 13 and 17 months, amounting to $2,754 64, and dated 6th April 1837; 3 notes executed by Hyde & Gleises in favor of Hyde and Brother, and endorsed by them, of like date, at six, twelve and eighteen months, amounting to $5,000. Also 3 notes executed by the same to Wm. T. Hepp, and endorsed by him, at 7, 11 and 15 months, amounting to $5,000; that he also produce the original envelope in which said papers were contained when delivered to him.

Marshal's Return on Copy of above Rule.

Received December 23, 1839. Returned, served a copy of the within on H. Lockett, Esq., by leaving the same at his office same day.

Signed W. K. STILES, *U. S. Dy M.*
For M. MARIGNY, *Marshal.*

And afterwards, on the 27th day of December, 1839, the following entry was made of record, to wit:

BOORAEM & Co.
vs. } No. 341.
HYDE & GLEISES AND H. LOCKETT.

This cause came on this day for trial before the court, M. W. Hoffman, Esq., appearing for the plaintiffs, and W. C. Micou, Esq., for defendants, when after hearing the evidence and arguments of counsel, the court took time to consider.

And on same day the following notes, protest and documents were filed in evidence, to wit:

Protest.

UNITED STATES OF AMERICA, *State of Louisiana.*

By this public instrument of protest be it known, that on this ninth day of July, in the year one thousand eight hundred and thirty-eight, at the request of the City Bank of New Orleans, holders of the original note whereof a true copy is on the reverse hereof written, I, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, presented said note to Mr. Gleises, one of the members of the firm of Hyde & Gleises the drawers, and demanded payment thereof, and was answered that the same would not be paid, the said note having been deposited in the hands of H. Lockett, Esq., together with several other notes subject to the conditions expressed in a receipt, which is also in the hands of said Lockett. Messrs. Booraem & Co., who claimed payment of said notes, have failed to comply with said conditions, in consequence of which the said drawers do not consider themselves bound in the premises. Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of
E. GRANET and
C. C. KENNEDY, *Witnesses.*

In testimony whereof, I grant these presents under my sig-
[L. S.] nature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

Signed H. B. CENAS,
Notary Pubic.

$2,000. NEW ORLEANS, *April 6th*, 1837.

Fifteen months after date, we promise to pay to the order of William T. Hepp, Esq., two thousand dollars, value received.

HYDE & GLEISES.

Endorsed: Wm. T. Hepp. H. Lockett.

Copy of Original Note.

$2,000. NEW ORLEANS, *April 6th*, 1837.

Fifteen months after date, we promise to pay to the order of Wm. T. Hepp, Esq., two thousand dollars, value received.

Signed HYDE & GLEISES.

Endorsed: Wm. T. Hepp.

Protest.

UNITED STATES OF AMERICA, *State of New York, ss.*

On the twenty-eighth day of April, in the year of our Lord one thousand eight hundred and thirty-seven, at the request of the National Bank, in the city of New York, I, Thomas W. Chrystie, notary public, duly admitted and sworn, dwelling in the city of New York, did present the original bill (a true copy whereof is on the other side written) at the counting-house of the acceptors thereof and demanded payment, but I was informed that they were not in, and the person in attendance could not pay. Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawers, acceptors, and endorsers of the said bill, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest already incurred, and to be hereafter incurred, for want of payment of the said bill.

Thus done and protested in the city of New York, aforesaid, in the presence of John Doe and Richard Roe, witnesses in *testimonium veritatis*.

Signed THOS. W. CHRYSTIE, [L. S.]
Notary Public, National Bank.

B. O. 4,504. NEW ORLEANS, *February 13th*, 1837.

Ex: $2,000. Sixty days after sight of this first of exchange, (second unpaid,) pay to Wm. T. Hepp, Esq., or order, two thousand dollars, value received, and charge the same to account.

HYDE & GLEISES.

Messrs. Booraem & Co. Due 28 April, New York. Par. Endorsed: Pay J. P. Nisbet, cashier, or order.

WM. T. HEPP.

Pay S. Flewwelling, Esq., cashier, or order.

J. P. NISBET, *Cashier*.

Accepted, 24th February, 1837.

BOORAEM & Co.

Original Bill.

B. O. 4,504. NEW ORLEANS, *February 13th*, 1837.

Exch: $2,000. Sixty days after sight of this first of exchange, (second unpaid,) pay to Wm. T. Hepp, Esq., or order, two thousand dollars, value received, and charge the same to account.

Signed HYDE & GLEISES.

To Messrs. Booraem, & Co.

Endorsed: Pay J. P. Nisbet, cashier, or order.

WM. T. HEPP.

Pay S. Flewwelling, Esq., cashier, or order.

J. P. NISBET, *Cashier.*

Accepted, 24th February, 1837.

BOORAEM & Co.

Note Annexed.

$1,568 74. NEW YORK, *September 4th*, 1836.

Eight months after date, we promise to pay to the order of Booraem & Co., at the Union Bank, in New Orleans, Louisiana, fifteen hundred and sixty-eight dollars and seventy-four cents, value received. Due 7th May.

Endorsed: Pay M. Judson & Co., or order.

BOORAEM & Co.

Pay to M. Robinson, *Ag.* or order.

M. JUDSON & Co.

Pay to P. Manhaz, assistant cashier, or order.

M. ROBINSON, *Aj.*

Protest.

UNITED STATES OF AMERICA, *State of Louisiana.*

By this public instrument of protest be it known, that on this ninth day of October, in the year one thousand eight hundred and thirty-eight, at the request of the City Bank of New Orleans, holder of the original note, whereof a true copy is on the reverse hereof written, I, Hilary Breton Cenas, a notary public in and for the city and parish *and parish* of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, presented said note to Mr. W. T. Hepp, the attorney in fact of the drawers of said note, said drawers being absent, and demanded payment thereof, and was answered that the same would not be paid, the said note having been deposited in the hands of H. Lockett, Esq., together with several other notes subject to the conditions expressed in a receipt which is also in the hands of said Lockett. Messrs. Booraem & Co., who claimed payment of said note, have failed to comply with said conditions, in consequence of which, the said drawers do not consider themselves bound in the premises.

Whereupon, I, the said notary, at the request aforesaid, did pro-

test, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges and interest suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of

E. GRANET and

A. POGNOT, *Witnesses.*

In testimony whereof, I grant these presents under my sig-
[L. S.] nature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

Signed H. B. CENAS, *Notary Public.*

$2,000. NEW ORLEANS, *April 6th*, 1837.

Eighteen months after date, we promise to pay to the order of Messrs. T. R. Hyde & Brother, two thousand dollars, value received.

HYDE & GLEISES.

Endorsed: T. R. Hyde & Brother. H. Lockett.

Original Note.

$2,000. NEW ORLEANS, *April 6th*, 1837.

Eighteen months after date, we promise to pay to the order of Messrs. T. R. Hyde & Brother, two thousand dollars, value received.

HYDE & GLEISES.

Endorsed: T. R. Hyde & Brother.

Protest.

UNITED STATES OF AMERICA, *State of Louisiana.*

By this public instrument of protest be it known, that on this ninth day of March, in the year one thousand eight hundred and thirty-eight, at the request of the City Bank of New Orleans, holder of the original note, whereof a true copy is on the reverse hereof written, I, Hilary Breton Cenas, a notary public, in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note to Mr. Gleises, one of the members of the firm of Hyde & Gleises, the drawers, and demanded payment thereof, and was answered that the same would not be paid, the said note having been deposited in the hands of H. Lockett, Esq., together with several other notes subject to the conditions expressed in a receipt, which is also in the hands of said Lockett. Messrs. Booraem & Co., who claimed payment of the said note, have failed to comply with said conditions, in consequence of which the said drawers do not consider themselves bound in the premises.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well

against the drawer or maker of said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs charges and interest, suffered, or to be suffered, for want of payment of the said note.

Thus done and protested, in the presence of
L. JOHNSON and
J. MANNING, *Witnesses.*

In testimony whereof, I grant these presents under my sig-
[L. S.] nature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.
Signed H. B. CENAS, *Notary Public.*

$1,500. NEW ORLEANS, *April* 6, 1837.

Eleven months after date, *I* promise to pay to the order of Wm. T. Hepp, Esq., fifteen hundred dollars, value received.
HYDE & GLEISES.

Endorsed, WM. T. HEPP,
H. LOCKETT.

Original Note.

$1,500. NEW ORLEANS, *April 6th*, 1837.

Eleven months after date, we promise to pay to the order of William T. Hepp, Esq., fifteen hundred dollars, value received.
HYDE & GLEISES.

Endorsed, WM. T. HEPP.

Protest.

UNITED STATES OF AMERICA, *State of Louisiana.*

By this public instrument of protest be it known, that on this ninth day of April, in the year one thousand eight hundred and thirty-eight, at the request of the City Bank of New Orleans, holder of the original note, whereof a true copy is on the reverse hereof written, I, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note to Mr. Gleises, one of the members of the firm of Hyde & Gleises, the drawers, and demanded payment thereof, and was answered that the same would not be paid, the said note having been deposited in the hands of H. Lockett, Esq., together with several other notes subject to the conditions expressed in a receipt, which is also in the hands of said Lockett. Messrs. Booraem & Co., who claimed payment of the said note, have failed to comply with said conditions, in consequence of which, the said drawers do not consider themselves bound in the premises. Whereupon, I, the said notary, at the request aforesaid, did protest, and, by these presents, do publicly and solemnly protest, as well against the drawer or maker of the said note,

as *as* against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered, or to be suffered, for want of payment of the said note.

Thus done and protested, in the presence of
T. JOHNSON and
J. MANNING, *Witnesses.*

In testimony whereof, I grant these presents under my sig-
[L. S.] nature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

Signed H. B. CENAS, *Notary Public.*

$1,500. NEW ORLEANS, *April 6th*, 1837.

Twelve months after date, we promise to pay to the order of Messrs. T. R. Hyde & Brother, fifteen hundred dollars, value received.

HYDE & GLEISES.

Endorsed, T. R. HYDE & BROTHER,
H. LOCKETT.

Original Note.

$1,500. NEW ORLEANS, *April 6th*, 1837.

Twelve months after date, we promise to pay to the order of Messrs. T. R. Hyde & Brother, fifteen hundred dollars, value received.

Signed HYDE & GLEISES.

Endorsed, T. R. HYDE & BROTHER.

Notes Annexed.

$1,500. NEW ORLEANS, *April 6th*, 1837.

Six months after date, we promise to pay to the order of Messrs. T. R. Hyde & Brother, fifteen hundred dollars, value received.

HYDE & GLEISES.

Endorsed, T. R. HYDE & BROTHER.

$1,500. NEW ORLEANS, *April 6th*, 1837.

Seven months after date, we promise to pay to the order of Wm. T. Hepp, Esq., fifteen hundred dollars, value received.

HYDE & GLEISES.

Endorsed, WM. T. HEPP.

$956 00. NEW ORLEANS, *April 6th*, 1837.

Thirteen months after date, we promise to pay to the order of Messrs. Booraem & Co., nine hundred and fifty-six dollars, value received.

HYDE & GLEISES.

$899 32. NEW ORLEANS, *April 6th*, 1837.

Seventeen months after date, we promise to pay to the order of Messrs. Booraem & Co., eight hundred and ninety-nine dollars and thirty-two cents, value received.

HYDE & GLEISES.

$899 32. NEW ORLEANS, *April 6th*, 1837.

Nine months after date, we promise to pay to the order of Messrs. Booraem & Co., eight hundred and ninety-nine dollars and thirty-two cents, value received.

HYDE & GLEISES.

Envelope marked C, addressed as follows: For Messrs. Booraem & Co., New York. Subject to the provisions of the receipt.

Envelope marked D, addressed as follows: Henry Lockett, Esq. To be delivered personally to him.

Letter and Account.

Messrs. HYDE & GLEISES, To BOORAEM & Co. DR.

1837.

Mar. 15	To cash paid your draft			$2,000		
Ap. 6	To cash paid your note			2,365		
July 4	Amt. your note due this day			1,592	36	
Mar. 3	Mdze *a* 8 ms. due 3-6 Nov.			2,148	25	
						$8,105 61
	Less 89 days' interest on					
		1,592	36	31	48	
	Less 7 months' interest on					
		2,148	25	100	24	
					137 72	
	To 22 days' int. on 2,000				10 23	
						121 49 $7,984 12
April 6	By note fav. and end. Hyde & Bro. *a* 6m.					1,500
	" " "				12m.	1,500
	" " "				18m.	2,000
	" " W. R. Hepp				11m.	1,500
	" " "				15m.	2,000
						8,500
	Less 3 p. c. exchange				255	
	" 6 months on			1,500	60	
	" 12 "			1,500	120	
	" 18 "			2,000	240	
	" 11 "			1,500	110	
	" 15 "			2,000	200	
					730	
					985	
						7,515 00
Balance due Booraem & Co., as cash, April 6, 1837,						469 12

E. E. New York, 26th May, 1837.

NEW YORK, *May* 26, 1837.

Messrs. HYDE & GLEISES:

GENTLEMEN: Above you have a statement of your account to the 6th of April, as made by one Mr. R., when in New Orleans, with the exception of $2,000 due 28th of April, and note due 7th of May, for $1,568 74. When Mr. Rathbone was in your city, he was not aware of the exact situation of our affairs, and the money market getting worse and worse *and* every day since, has rendered it impossible for us to comply with the arrangement he made with you, or to place you in funds for the amounts named. You will notice, by the statement, that the first note of $1,500, endorsed by Mr. Hepp, and the three drawn in our favor we have deducted, which leaves $8,500 of the endorsement, which we propose to take, thereby giving you all the time you ask, and allowing you to retain the shortest note among the endorsed papers; which we think is giving a liberal extension on the whole amount. Six thousand dollars of our account is part due, saving the note due 4th July, which we will withdraw. It is out of our hands, but we will manage to get possession of it, should this arrangement meet your views. You can retain either of the $1,500 notes, to suit your own arrangements.

Mr. Hyde must know our situation, and how impossible it is for us to do any thing different from this. We can barely get money enough to pay our confidential paper at this time, and in order to gain possession of your note, due 4th July, must run our credit for it.

Please advise us, by first express mail, that we may have time to remit you an order for the note in case it has gone on for collection, or you can send the notes to your agents here to hand to us, by our delivering up the note and receipt of the drafts and notes and for statement. Should there be any thing incorrect in the statement, we will [torn by the seal] it right, together with the balance against you, when we ag[torn by opening the letter] have the pleasure of seeing one of your house here.

Mr. R. returned 23d this mo.

Yours, very respectfully,

Signed BOORAEM & CO.

Addressed: Express Mail.

Messrs. HYDE & GLEISES, New Orleans, La.

Commission, Depositions, and Certificates, &c. opened and filed in open Court, December 26th, 1839.

CIRCUIT COURT OF THE UNITED STATES,
For the Ninth Judicial Circuit
and Eastern District of Louisiana.

To George W. Morton, United States commissioner, or to any judge or justice of the peace in the city of New York:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call

and cause to come before you certain witnesses, and them duly examine on oath, touching and concerning certain matters and things in a cause now depending in the said court, wherein Booraem & Co. are plaintiffs, and Hyde & Gleises are defendants, and the same examinations so taken and reduced to writing, you certify, under your hand and seal, and send enclosed to this court, without delay, to be read in evidence on the trial of said cause, and send also this writ :

Witness the Honorable R. B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New [L. s.] Orleans, this 27th day of May, Anno Domino, 1839, and the 63d year of the Independence of the United States of America.

Signed DUNCAN N. HENNEN,
Clerk.

If executed by any judge or justice of the peace, proof of qualification as such is waived.

Signed LOCKETT & MICOU,
For Deffs. and Intervenors.

Endorsed.

The execution of the within commission appears by the depositions and exhibits signed by me and annexed. Nov. 5th, 1839.

Signed GEO. W. MORTON,
Commissioner.

Document B.

Messrs. Hyde & Gleises, to Booraem & Co. Drs.

1837. March 15th, to cash paid your draft,				$2,000	
April 6, to cash " " note,				2,365	
July 4, to amt. of your note on this day,				1,592	36
March 3, to merchs. at 8 mo. due 3–6 Nov.				2,148	25
				$8,105	61
Less 89 days' int. on 1,592 36		31	48		
7 mos. " " 2,148 25		100	24		
		131	72		
To 22 days' " " 2,000		10	23	121	49
				$7,984	12

Cr.

1837.			
April 6th, by note en'd by Hyde & Bro. at 6 mos.			1,500
" " " "	12	"	1,500
" " " "	18	"	2,000
" " " W. R. Hepp	11	"	1,500
" " " " "	15	"	2,000
			8,500

Less 3 per cent. Exchange,				255		
6 months'	on	1,500,	60			
12 "	"	1,500,	120			
18 "	"	2,000,	240			
11 "	"	1,500,	110			
15 "	"	2,000,	200	730	985	$7,515 00

Balance due Booraem & Co. as cash, April 6th, 1837, $469 12

E. E. New York, 26 May, 1837.

NEW YORK, *May 26th*, 1838.

Messrs. HYDE & GLEISES:

GENTLEMEN: Above you have a statement of your account to the 6th of April, as made by one Mr. R. in New Orleans, with the exception of $2,000, due 28th of April, and note due 7th of May, for $1,568 74. When Mr. Rathborn was in your city, he was not aware of the exact situation of our affairs, and the money market getting worse and worse every day since, has rendered it impossible for us to comply with the arrangement he made with you, or to place you in funds for the amounts named; you will notice by the statement that the first note of $1500, endorsed by Mr. Hepp, and the three drawn in our favor, we have deducted, which leaves $8,500 of the endorsement which we propose to take, thereby giving you all the time you ask, and allowing you to retain the shortest note among the endorsed papers, which we think is giving you a liberal extension on the whole amount. Six thousand dollars of our account is part due, saving the note, due on the 4th July, which we will withdraw. It is out of our hands, but we will manage to get possession of it. Should this arrangement meet your views, you can retain either of the $1,500 notes, to suit *to suit* your own arrangements. Mr. Hyde must know our situation, and how impossible it is for us to do any thing different from this; we can barely get money enough to pay our confidential paper at this time, and in order to gain possession of your note, due 4th July, must run our credit for it.

Please advise us by the first express mail, that we may have time to remit you an order for the note in case it has gone on for collection, or you can send the notes to your agents here to hand to us by our delivering up the notes and receipt of the drafts and notes, as per statement. Should there be any thing incorrect in the statement we will make it right, together with the ballance against you, when we again have the pleasure of seeing one of your house here.

Mr. R. returned 23d this mo.

Yours, very respectfully,

Signed BOORAEM & CO.

This paper writing, marked document B. was produced and shown to the witness, John L. Hubbard, and by him testified to on

his examination, this 5th day of November, A. D. 1839, before me.
Signed GEO. W. MORTON,
Commissioner.

Exhibit Marked C.

NEW ORLEANS, 23 *Dec.* 1836.

Messrs. BOORAEM & Co., *New York.*

GENTLEMEN: We hasten to inform you that we have just drawn on you at 60 days' sight, for $2,000, in favor of C. Lafonta, which you will please accept for our account. We did not intend drawing on you, but the hard times on the money market have compelled us to claim again your kind indulgence. You will please inform us of the acceptance, to enable us to remit to you in time. We have had the pleasure of seeing your Mr. Rathbone, and consulted him on the subject of the above mentioned draft.

We remain, truly, your obedient servants,
Signed HYDE & GLEISES.

This paper writing, marked C., was produced and shown to the witness, John L. Hubbard, and by him testified to on his examination before me, November 5th, 1839.
Signed GEO. W. MORTON,
Commissioner.

11th January, at 60 days, due 15th March, $2,000, addressed as follows: by express mail, Messrs. Booraem & Co., New York.

CIRCUIT COURT OF THE UNITED STATES,
For the Ninth Judicial Circuit, Louisiana.

BOORAEM & Co.
vs.
HYDE & GLEISES.

Interrogatories to be answered under oath by witnesses sworn on behalf of plaintiffs, under a commission issuing herein.

1st. Int. Are you acquainted with the plaintiffs and defendants herein, and how long have you known them as commercial firms.

Int. 2d. Had said plaintiffs and defendants, to your knowledge, any dealings as merchants by the sale of merchandize, drawing and accepting bills, and otherwise; and about what time did the same commence?

3d. Which of said parties were in advance to the other; and have you such knowledge of their accounts and business transactions between them, as to enable you to say whether the accounts of defendants, as stated in plaintiffs' books, are correct?

4th. Annex a copy of plaintiffs' and defendants' account, and state whether you know the same to be correct or not, and how you derive your information?

5th. Are you acquainted with the handwriting of the commercial firm of defendants, or either of them; and examine the handwriting of the letters produced by plaintiffs, and purporting to be from defendants to them the plaintiffs, and say whether said handwriting is that of defendants?

6th. At the time of receiving letters from defendants, advising or having drawn on plaintiffs, had the said plaintiffs any funds in their hands belonging to defendants to meet said drafts, and in what instances, if any, were said plaintiffs compelled to come under advances to said defendants?

7th. Are you acquainted with any facts which go to show that defendants were in a state of insolvency previous to the omission on the part of the plaintiffs to pay or take up the draft for $2,000, and the note for $1,568 74, as agreed by them to do, or any facts going to show that said defendants would not have been able to meet their engagements and sustain their credits, even had said plaintiffs taken up said draft and note? State the same in full.

8th. Do you know any facts or circumstances which prevented said plaintiffs from taking up said draft and note; did they not use every exertion in their power to do so, and did the omission to do so proceed from any neglect or want of exertion on their part; examine the account in document here annexed, marked B, and state whether you know the same to be correct, and whether or not the said defendants are not indebted to said plaintiffs in the amount therein set forth.

9th. Do you know any other matter or thing going to show that said defendants are justly indebted to said plaintiffs in the amount claimed by them, and that said defendants have suffered no damage from any omissions of said plaintiffs?

Signed M. W. HOFFMAN,
Plaintiffs' Attorney.

No Cross Interrogatores.

Signed LOCKETT & MICOU,
For Defendants and Intervenors.

UNITED STATES OF AMERICA,
Southern District of New York.

Depositions of witnesses produced, sworn, and examined the fifth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, at the city of New York, under and by virtue of a commission issued out of and under the seal of the circuit court of the United States for the ninth judicial circuit and eastern district of Louisiana, in a certain cause therein pending, wherein Booraem & Co. are plaintiffs, and Hyde & Gleises are defendants, on the interrogatories annexed to said commission.

John L. Hubbard, at present residing in the city of Brooklyn, State of New York, aged twenty-seven years and upwards, being

duly and publicly sworn on the Holy Evangelists, on the part of the plaintiffs, Booraem & Co., to testify the whole truth, doth depose and say as follows:

First. To the first interrogatory, he says, I am acquainted with the plaintiffs, and have known them as a commercial firm since August, 1834. I have known the defendants as a commercial firm since February, 1836, but am personally acquainted with Mr. Hyde only.

Second. To the second interrogatory, he saith, they had large dealings as merchants, by the sale of merchandise by plaintiffs to defendants, commencing in September, 1834; they also had operations by plaintiffs' accepting bills drawn by defendants, at various times, for the exclusive benefit of defendant.

Third. To the third interrogatory, he saith, that plaintiffs advanced their name by accepting defendants' drafts at different times, for defendants' accommodation, without any funds of defendants' in hand or security; and defendants, since 1834, have at all times been largely indebted to plaintiffs. I know the account of defendants, as stated in plaintiffs' book, to be correct, from having had charge of plaintiffs' books since February, 1836.

Fourth. To the fourth interrogatory, he saith:

Hyde & Gleises, To Booraem & Co.	Dr.
For Booraem & Co. acceptance of Hyde & Gleises' draft, due 15th March, 1837 - - - -	$2,000 00
For do. do. 28 April, 1837 - - -	2,000 00
For cash paid Hyde & Gleises' note due 6—9 April, 1837 - - - - - -	2,365 00
Hyde & Gleises' note due 7 May, 1837 - -	1,568 74
Do. do. do. " 4 July, " - -	1,592 36
Merchandize, March 3d, 1837, at 8 months -	2,148 25
	$11,674 35

I know the defendants were indebted to the plaintiffs on the 6th of April, 1837, as stated above, from an examination of the books of the plaintiffs, less a balance of open account to credit of defendants, on the first of January, 1837, of fifty-three dollars 73 cents, omitted in settlement made with them on the 6th of April, 1837, in New Orleans, by J. B. Rathbone, but I believe the defendants have arranged or paid the acceptance of two thousand dollars, due 28th April, 1837, and the note for $1,568 74, due May 7th, 1837.

Fifth. To the fifth interrogatory, he saith, I am acquainted with the handwriting of the commercial firm of defendants, and believe the signatures to the letters produced by plaintiffs to be those of defendants, and the Exhibit marked C, and annexed, is one of those letters; the signature is in the proper handwriting of Gleises, one of the defendants.

Sixth. To the sixth interrogatory, he saith, the plaintiffs had

not any funds belonging to defendants, at the time of receiving letters from defendants, advising of having drawn on plaintiffs; plaintiffs were compelled to come under advances to defendants in paying their acceptance of defendants' draft of two thousand dollars, due March 15th, 1837, for which plaintiffs were not put in funds by defendants, and in protecting defendants' note for two thousand three hundred and sixty-five dollars, due 6—9 April, 1837, which had been endorsed by plaintiffs for the use and accommodation of defendants; they had also to protect defendants' note of $1,592 36, due 4th July, 1837, which was originally given to plaintiffs for merchandize, sold by them to defendants, but negotiated by the plaintiffs, and not paid by the defendants.

Seventh. To the seventh interrogatory, he says, the defendants drew upon the plaintiffs in order to take up defendants' note in favor of the plaintiffs, previous to the omission, on the part of the plaintiffs, to pay their acceptance, due 28th April, 1837, of $2,000. Plaintiffs received a letter from defendants, dated August 5th, 1837, in which said defendants state their assets to be $83,388 10, to pay $120,392 46 of liabilities.

Eighth. To the eighth interrogatory, he says, the plaintiffs were unable to take up said draft of $2,000, due 28th April, 1837, and note of $1,568 74, having failed on 15th April, 1837. At that time they were compelled to stop payment generally; they used every exertion to meet their engagements. I know defendants to be indebted to plaintiffs for $8,105 61, as stated in document marked B, now produced and shown to witness, less the credit of $53 73, before testified to.

Ninth. To the ninth interrogatory, he saith, that as far as witnesses knowledge of the business of the said defendants extends, he has no doubt that they could have failed, and that no omission on the part of the plaintiffs could have caused or led to the failure of the defendants.

Signed JOHN L. HUBBARD.

Examination taken and reduced to writing by me, and read to and subscribed and sworn to by the witness, John L. Hubbard, on his examination before me, this fifth day of November, A. D. 1839.

Signed GEO. W. MORTON, *Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss.*

I, Frederick J. Betts, clerk of the circuit court of the United States for the southern district of New York, do hereby certify that George W. Morton, whose name, in his own proper handwriting, is subscribed to the annexed depositions, exhibits, and commission, was, at the time of signing the same, a commissioner duly appointed by the circuit court of the United States for the southern district of

New York, in pursuance of acts of Congress in such case made and provided.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, this fifth day [L. S.] of November, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

Signed FRED. J. BETTS.

Enveloppe, addressed as follows:

To the Clerk of the Circuit Court of the United States for the Ninth Judicial Circuit, New Orleans, Louisiana.

BOORAEM & Co., plaintiffs
vs.
HYDE & GLEISES, defendants.

Placed in the post office, New York, by me, this 5th day of November, 1839.

Signed GEO. W. MORTON, *Commissioner.*

And afterwards to wit, on the 28th day of December, 1839, the following judgment was entered of record, to wit:

BOORAEM & Co
vs. No. 341.
HYDE & GLEISES AND H. LOCKETT.

The court having maturely considered the evidence in this case and the arguments of counsel thereon, and being of opinion, that the defence set up by the several defendants, and by the intervening party, has not been made out, and it appearing, that on the sixth of April, eighteen hundred and thirty-seven, the defendants Hyde & Gleises, were indebted to the plaintiffs, in the sum of eleven thousand seven hundred and eighty-nine dollars and sixty-four cents, which from the receipt of the tenth April, eighteen hundred and thirty-seven, was novated by the delivery of the following notes, to wit: Three drawn by said Hyde & Gleises to the order and endorsed by T. R. Hyde & Brother, two of them for the sum of fifteen hundred dollars each, and the third for two thousand dollars. Three other notes drawn by said Hyde & Gleises to the order of and endorsed by said Wm. T. Hepp; two of them for fifteen hundred dollars each, and the third for two thousand dollars; and three other notes drawn by said Hyde & Gleises to the order of plaintiffs, two for the sum of eight hundred and ninety-nine dollars thirty-two cents each, and the third for nine hundred and fifty-six dollars. And it appearing, that of the obligations which the plaintiffs agreed to pay for said Hyde & Gleises, part and parcel of the said eleven thousand seven hundred and eighty-nine, sixty-four hundreths dollars, the plaintiffs neglected to pay at maturity a draft for two thousand dollars, due the twenty-eighth April, eighteen hundred and thirty-seven, and a note of fifteen hundred and sixty-seven dollars seven-

ty-four cents, due May the seventh, eighteen hundred and thirty-seven, which were paid by the said Hyde & Gleisis, which sums, together with legal interest thereon, amount to four thousand and twen--ty two dollars seventy-four cents, and it appearing to the court that the residue of the said eleven thousand seven hundred and eighty--nine dollars sixty-four cents, after deducting the four thousand and twenty-two dollars seventy-four cents, ought by the said contract of the 10th April, to be paid and satisfied out of the aforesaid notes in the following manner: It is therefore ordered, adjudged and decreed, that four of the said notes in possession of the said defendant H. Lockett Esq., to wit: Two drawn by the said Hyde & Gleises to the order of T. R. Hyde & Brother, dated sixth April, eighteen hundred and thirty-seven, one for two thousand dollars, payable eighteen months after date, the other for fifteen hundred dollars, payable twelve months after date; and two other notes drawn by said Hyde & Gleieses, to the order of William T. Hepp, dated sixth April, one thousand eight hundred and thirty-seven, one for two thousand dollars, payable fifteen months after date, and the other for fifteen hundred dollars, payable eleven months after date, amounting in all to seven thousand dollars, be delivered by said defendant, Lockett to said plaintiffs or their attorney, and the remaining five notes to wit: the three drawn by said Hyde & Gleises to the order of the plaintiffs, one to the order of said T. R. Hyde & Brother for fifteen hundred dollars, payable six months after date, and one to the order of William T. Hepp for fifteen hundred dollars, payable seven months after date, be delivered to the defendants Hyde & Gleises. And it further appearing, that the sum of seven hundred and seventy-six dollars ninety cents, remains unsatisfied, and that none of said five notes are applicable thereto. It is further decreed that there be judgment in favor of said plaintiffs against said defendants Hyde & Gleises, for the said sum of seven hundred and seventy-six dollars ninety cents with interest fom the date of this decree till paid, and costs of suit. And the intervening parties in this case, having, subsequently to the trial of said cause, and before judgment pronounced thereon, moved the court to discontinue their said petition of intervention, and the motion being opposed by the plaintiffs in the suit, it is ordered by the courtt hat the motion be allowed. It is therefore decreed that the said intervenors have leave to discontinue on the payment of costs of said intervention. Judgment signed January 11th, 1840.

Signed P. K. LAWRENCE, *U. S. Judge.*

And afterwards to wit, on the 31st day of December, 1839, the defendants came into court and filed the following motions and grounds to wit:,

BOORAEM & Co.
vs.
HYDE & GLEISIS AND H. LOCKETT.

The defendants now come into court and pray that the plaintiffs be required to shew cause, why a new trial should not be granted

in this case on the grounds now filed, and that said plaintiffs be notified to answer the same on Saturday next at 10 o'clock.

BOORAEM & Co.
vs.
HYDE & GLEISIS AND H. LOCKETT.

The defendants move for a new trial of this cause on the grounds.

1st. That the judgment of the court is contrary to law and the evidence adduced.

2d. That no proof of a delivery of the notes sued for to plaintiffs was adduced, although alleged in the petition, and material to plaintiffs recovery'.

3d. That no proof of a demand of the notes from H. Lockett was adduced, although alleged and material.

4th. That defendants adduced proof that said notes were never delivered by defendants to plaintiffs as alleged. That J. Davenport, a witness sworn in open court, (the clerk of Hyde & Gleises) proved that the notes sued for and the receipt of Booraem & Co., were enveloped by said witness, in the presence and by direction of plaintiffs and Hyde & Gleises; that the address and directions thereon appearing, were written by the direction of said parties for the purpose of depositing the packet with H. Lockett Esq., and that plaintiffs and said Hyde & Gleises agreed to deposit said packet with said H. Lockett. That it appears of record that said notes and envelope were brought into court by said H. Lockett under the call of the plaintiffs; all of which said testimony though uncontradicted was disregarded in the judgement of the court.

5th. That the judgment is inconsistent with the prayer of the petition.

And on same day the following rule was entered of record, to wit:

PARISH AND Co.
vs.
HYDE AND GLEISIS AND H. LOCKETT.

On motion of the defendants' counsel W. C. Micou Esq., ordered that the plaintiffs shew cause on Saturday next at 10 o'clock A. M., why a new trial should not be granted on the grounds on file.

Marshal's return on the copy of the above.

Received 2d January, 1840, and served same day a copy of the within on M. W. Hoffman Esq. in person.

for M. MARIGNY, *U. S. M.*
per Wm. K. STILES, *Dy. U. S. M.*

And afterwards to wit, on the 4th day of January, 1840, the following entry was made of record, to wit:

BOORAEM & Co.
vs.
HYDE & GLEISIS. } No. 341.

The rule taken by the defendants to shew cause why a new trial should not be granted, came on this day and was argued by counsel, and thereupon the court took the same under advisement.

And afterwards, to wit, on the sixth day of Junuary, 1840, the following order was made of record, to wit:

BOOAREM & Co.
vs.
HYDE & GLEISES. } No. 341.

On this day the court delivered its opinion on the application of defendants for a new trial, and in conformity therewith it is ordered that the motion be overruled and the new trial refused.

And afterwards, to wit, on the 21st day of January, 1840, the defendants, Hyde & Gleises, came into court by Lockett & Micou, Esqrs., their attornies, and filed the following petition for a writ of error, to wit:

BOORAEM & Co.
vs.
HYDE & GLEISIS AND H. LOCKETT.

To the Honorable, the Ninth Circuit Court of the United States for the Eastern District of Louisiana:

The petition of Hyde & Gleises, of New Orleans, defendants in said cause, respectfully shows, that he is advised and believes that there is manifest error in the final judgment of the court rendered against these defendants, and signed on the 11th January, inst. Wherefore he prays that a writ of error be granted him, returnable to the Supreme Court of the United States, upon his giving bond with security for costs, the same not to operate as a supersedeas of the judgment against these petitioners.

Signed LOCKETT & MICOU,
Attornies for Petitioners.

And on same day the defendant H. Lockett, came into court by W. C. Micou, Esq., his attorney, and filed the following petition for a writ of error, to wit:

BOORAEM & Co.
vs.
HYDE & GLEISES, AND H. LOCKETT.

To the Honorable, the Circuit Court of the United States for the Eastern District of Louisiana:

The petition of Henry Lockett, of New Orleans, one of the defendants in said cause, respectfully shews, that he is advised and

believes that there is manifest error in the final judgment of the court rendered against this defendant, and signed on the 11th January inst. Wherefore he prays that a writ of error be granted him, returnable to the Supreme Court of the United States, upon his giving bond with security, to operate as a supersedeas according to law.

Signed WM. C. MICOU,
Defendants' Attorney.

And on same day, to wit, the 21st day of January, 1840, the following entry was made of record, to wit:

BOOAREM & Co.
vs.
HYDE & GLEISES. } No. 341.

On motion of W. C. Micou, Esq., of counsel for the defendants, and upon the suggestion that the said defendants herewith present petitions for writs of error, the said counsel prays from the court a statement of facts proved upon the trial of the cause, which hereto granted, and the said statement, signed by the judge, is now filed.

Statement of Facts.

BOORAEM & Co.
vs.
HYDE & GLEISES, AND H. LOCKETT. } Statement of Facts by the Court.

The plaintiffs offered in evidence the receipt of Booraem & Co., annexed to defendants answer; the deposition of witnesses taken in New York; the account marked A. annexed to the petition; three notes of Hyde & Gleises, one for $2,365, one for $2,000, and one for $1,592 36; and the eight notes of Hyde & Gleises, described in the account marked A, and produced in court by the defendant, H. Lockett, upon the call of the plaintiffs.

The defendants proved by James Davenport, a witness sworn in open court, that the account marked A, the receipt of Booraem & Co., annexed to the answer and the address appearing on two envelopes also produced in court by H. Lockett, under the plaintiffs call, were all in the handwriting of the said witness, who was a clerk of Hyde & Gleises, in April, 1837. That the said receipt of Booraem & Co., and the said eight notes of Hyde & Gleises, described in the petition, receipt, and account A, were enclosed by witness in the presence of Mr. Rathbone, one of the plaintiffs, and of the defendants Hyde & Gleises, in the envelopes on file marked C. and D.

The defendants offered in evidence the said envelopes and an original letter of the plaintiffs, dated New York, May 26th, 1837, and also two notes of Hyde & Gleises, in favor of Booraem & Co., one for $2,000, the other for $1,568 74.

Signed P. K. LAWRENCE, *U. S. Judge.*

And on same day, to wit, the 21st day of January, 1840, the following entry was made of record, to wit:

BOOAREM & Co.
vs.
HYDE & GLEISES. } No. 341.

On motion of W. C. Micou, Esq., and upon presenting to the court petitions for writs of error and bonds, it is ordered that the said writs be granted in pursuance of the prayer of petitioners, that the bonds offered be approved, and that the writ of error operate as a supersedeas and stay of execution against H. Lockett only.

And on same day the defendants Hyde & Gleises, came into court and filed the following bond, to wit:

Know all men by these presents, that we, Hyde & Gleises, as principals, and W. T. Hepp, and W. C. Micou, as securities, are held and firmly bound to the firm of Booraem & Co., their executors and administrators, in the sum of two hundred and fifty dollars, to which payment well and truly to be made, we bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 16th day of January, 1840.

Whereas the above bound Hyde & Gleises have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in this suit lately depending and decided in the circuit court of the United States for the ninth circuit, holding sessions in and for the eastern district of Louisiana, wherein said Booraem & Co., are plaintiffs, and said Hyde & Gleises et als. defendants. Now the condition of this obligation is such, that if the said Hyde & Gleises, plaintiffs in error, shall prosecute their writ with effect, and answer all damages and costs if he fail to make his plea good, then this obligation to be void, else to remain in full force and effect.

Signed PAUL I. GLEISES, [L. S.]
HYDE & GLEISES,
Per P. I. GLEISES, [L. S.]
W. T. HEPP, [L. S.]
W. C. MICOU. [L. S.]

And on same day the defendant, H. Lockett, came into court and filed the following bond, to wit:

Know all men by these presents, that we, Henry Lockett, as principal, and Theophilus R. Hyde, William T. Hepp and William C. Micou, as sureties, are held and firmly bound to the firm of Booarem & Co., their executors and administrators, in the sum of nine thousand dollars, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our

and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals and dated this 16th day of January, 1840.

Whereas the above bound Henry Lockett has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the suit lately depending and decided in the circuit court of the United States for the ninth circuit, holding sessions in and for the eastern district of Louisiana, wherein said Booarem & Co., were plaintiffs, and said H. Lockett, et als. defendants. Now the condition of this obligation is such, that if said H. Lockett, plaintiff in error, shall prosecute his writ to effect and answer all damages and costs if he fails to make his plea good, then this obligation to be void, else to remain in full force and effect.

Signed and sealed in the presence of

Signed

W. T. HEPP, [L. S.]
T. R. HYDE, [L. S.]
H. LOCKETT, [L. S.]
WM. C. MICOU. [L. S.]

CLERK'S OFFICE, CIRCUIT COURT OF THE UNITED STATES,
Ninth Judicial Circuit, Eastern District of Louisiana.

I do hereby certify that the foregoing thirty-six and a fourth pages of writing, contain a full and complete transcript of the records, process, pleas, proceeding, pleadings, evidence, and other matters of record in this office, in a certain suit pending in said court, Booraem & Co. plaintiffs, and Hyde & Gleises and H. Lockett defendants, as fully as the same remains on file and of record in this office.

Witness my hand and seal of said court, at the city of New Orleans, this nineteenth day of June, in the year of our Lord one thousand eight hundred and forty, and of the Independence of the United States of America the sixty fourth.

[L. S.]

DUNCAN N. HENNEN, *Clerk.*
by FRANCIS A. FOYGNET, *Dep'y Clerk.*

I, Philip K. Lawrence, judge of the United States district court for the eastern district of Louisiana, and one of the judges of the circuit court of the United States in and for said district, do hereby certify that Duncan N. Hennen is the clerk of the said circuit court, and that Francis A. Foygnet, who signed the above certificate, is now, and was at the time of so doing, the duly appointed deputy of said Duncan N. Hennen, and that due faith and credit ought to be given to his attestations as such.

Given under my hand and seal, at the city of New Orleans, this 20th day of June, A. D. 1840.

P. K. LAWRENCE,
United States Judge.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the circuit court of the United States for the ninth circuit and eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the circuit court, between Booraem & Co., plaintiffs, and Hyde & Gleises and H. Lockett, defendants, a manifest error hath happened, to the great damage of the the said H. Lockett, as appears by his complaint. We being willing that error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record of proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court, this second Monday of January, 1840, and the sixty-fourth year of the Independence of the United States.

[L. S.]

DUNCAN N. HENNEN, *Clerk.*

CLERK'S OFFICE, UNITED STATES CIRCUIT COURT,
Ninth Judicial Circuit, Eastern District of Louisiana.

I do hereby certify that a copy of the foregoing writ of error was lodged in the said clerk's office on the 22d day of May, 1840.

Witness my hand and the seal of said court, at the city of New Orleans, this 13th day of July, 1840.

[L. S.]

DUNCAN N. HENNEN, *Clerk.*
by FRANCIS A. FOYGNET, *Dep'y Clerk.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the circuit court of the United States for the ninth circuit and eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court between Booraem & Co., plaintiffs, and Hyde & Gleises and H. Lockett, defendants, a manifest error hath happened, to the great damage of the said Hyde & Gleises, as by their complaint appears. We being willing that error, if any has been, should be duly corrected,

and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this second Monday of January, in the year of our Lord one thousand eight hundred and forty, and the sixty-fourth year of the Independence of the United States.

[L. S.]

DUNCAN N. HENNEN, *Clerk.*

CLERK'S OFFICE, UNITED STATES CIRCUIT COURT,
Ninth Circuit, and Eastern District of Louisiana.

I do hereby certify that a copy of the foregoing writ of error was lodged in the said clerk's office on the 22d day of May, 1840.

Witness my hand, and the seal of said court, at the city of New Orleans, this 13th day of July, 1840.

[L. S.]

DUNCAN N. HENNEN, *Clerk.*
by FRANCIS A. FOYGNET, *Dep'y Clerk.*

The President of the United States to Booraem & Co. greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth judicial circuit and eastern district of Louisiana, wherein Hyde & Gleises and H. Lockett are plaintiffs in error, and yourselves are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this second Monday of January, in the year of our Lord one thousand eight hundred and forty.

[L. S.]

P. K. LAWRENCE,
United States Judge.